

EXHIBIT F

[PUBLIC VERSION]

2019

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**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**



HOUSE BILL NO. [BILL NUMBER]

Special purpose depository institutions.

Sponsored by: HDraft Committee

A BILL

for

1 AN ACT relating to banking; making legislative findings;
2 creating special purpose depository institutions as a new
3 financial institution; providing that special purpose
4 depository institutions shall be mutual corporations with
5 dividends and assessments; limiting membership to nonnatural
6 persons engaged in a bona fide business; specifying
7 compliance with applicable federal laws; authorizing the use
8 of a specialized technology platform; establishing procedures
9 for the incorporation, chartering and operation of special
10 purpose depository institutions; establishing procedures for
11 liquidation, receivership and dissolution of special purpose
12 depository institutions; requiring a surety bond or pledged
13 investments; exempting special purpose depository

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1 institutions from depository insurance requirements; making
2 conforming amendments; and providing for effective dates.

3

4 *Be It Enacted by the Legislature of the State of Wyoming:*

5

6 **Section 1.**

7

8 (a) The legislature finds the following:

9

10 (i) The rapid innovation of blockchain technology,
11 including the growing use of virtual currency and digital
12 assets, has resulted in many blockchain innovators being
13 unable to access secure and reliable banking services,
14 hampering development of blockchain services and products in
15 the marketplace;

16

17 (ii) Federally insured financial institutions are
18 not generally permitted to manage accounts in virtual
19 currency or hold other digital assets;

20

21 (iii) Blockchain innovators have greater
22 compliance challenges with federal customer identification,
23 anti-money laundering and beneficial ownership requirements

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1 because of the complex nature of these obligations and the
2 unfamiliarity of regulators with blockchain innovators'
3 businesses;

4

5 (v) These intricate obligations have resulted in
6 many financial institutions in Wyoming and across the United
7 States refusing to provide banking services to technology
8 innovators and also refusing to accept deposits in United
9 States currency obtained from the sale of virtual currency or
10 other digital assets;

11

12 (vi) Compliance with applicable federal and state
13 laws is critical to ensuring the future growth and reputation
14 of the blockchain and technology industries as a whole;

15

16 (vii) Most financial institutions today do not
17 have the expertise or familiarity with the challenges facing
18 blockchain innovators which is required to provide secure and
19 reliable banking services;

20

21 (viii) A new type of Wyoming financial institution
22 that has expertise with customer identification, anti-money
23 laundering and beneficial ownership requirements could

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1 seamlessly integrate these requirements into its operating
2 model; and

3

4 (ix) Authorizing special purpose depository
5 institutions to be chartered in Wyoming will provide a
6 necessary and valuable service to the blockchain industry,
7 emphasize Wyoming's partnership with technology and financial
8 innovators and safely grow this state's developing financial
9 sector.

10

11 **Section 2.** W.S. 13-2-406 and 13-12-101 through
12 13-12-129 are created to read:

13

14 **13-2-406. Applicability to special purpose depository**
15 **institutions.**

16

17 (a) This article shall apply to special purpose
18 depository institutions, as defined in W.S. 13-1-101(a)(xvi).

19

20 (b) As used in this article, "shareholders" or
21 "stockholders" shall include subscribers of a special purpose
22 depository institution.

23

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1

CHAPTER 12

2

[SPECIAL PURPOSE DEPOSITORY INSTITUTIONS]

3

4

13-12-101. Short title.

5

6

This chapter may be cited as the "[XXXXXXXXXXXXXXXXXXXXX]."

7

8

9

10

STAFF COMMENT

11

12

The Task Force could consider inserting an appropriate

13

short title here.

14

15

16

17

18

13-12-102. Definitions.

19

20

(a) As used in this chapter:

21

22

(i) "Insolvent" means, consistent with rules

23

adopted by the commissioner, a circumstance when a special

24

purpose depository institution fails to:

25

26

(A) Comply with the requirements of W.S.

27

13-12-105;

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2 (B) Maintain a contingency account, as
3 required by W.S. 13-12-107(e);

4

5 (C) Pay, in the manner commonly accepted by
6 business practices, its legal obligations to depositors on
7 demand or to discharge any certificates of deposit,
8 promissory notes or other indebtedness when due.

9

10 *****
11 *****
12 STAFF COMMENT

13
14 These requirements are from W.S. 13-4-201(a)(ii) and (iii).
15 "Contingency account" was used instead of "reserve" to
16 further clarify the difference between it and the "liquid
17 assets" required under W.S. 13-12-105.

18
19 *****
20 *****
21

22 (ii) "Subscriber" means an entity which is not a
23 natural person and which;

24

25 (A) Has paid all required subscriptions to a
26 special purpose depository institution;

27

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1 (B) Is in good standing with the jurisdiction
2 in the United States in which it is incorporated or organized;
3 and
4

5 (C) Is engaged in a bona fide business, as
6 provided in W.S. 13-12-106(b).
7

8 (iii) "Unsafe or unsound condition" means,
9 consistent with rules adopted by the commissioner, a
10 circumstance relating to a special purpose depository
11 institution, excluding compliance with anti-money laundering,
12 customer identification and beneficial ownership
13 requirements, which is likely to:
14

15 (A) Cause the insolvency of the institution;
16

17 (B) Cause a substantial dissipation of assets
18 or earnings;
19

20 (C) Substantially disrupt the services
21 provided by the institution to subscribers;
22

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1 (D) Otherwise substantially prejudice the
2 depository interests of subscribers.

3

4 *****
5 *****
6 STAFF COMMENT

7
8 The Task Force should consider whether it is appropriate to
9 include anti-money laundering, customer identification and
10 beneficial ownership requirements as a potential unsafe or
11 unsound condition.

12
13 The Banking Commissioner requested clarification of this
14 issue.

15
16 *****
17 *****
18

19 13-12-103. Applicability of other provisions.

20

21 (a) Except as otherwise provided in subsection (b) of
22 this section, all other provisions of this title shall apply
23 to this chapter.

24

25 (b) The following provisions of this title shall not
26 apply to this chapter:

27

28 (i) W.S. 13-1-101(a)(vii) *[definition of "director"*
29 *(of the department of audit)]*;

30

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- 1 (ii) W.S. 13-1-201 *[applicability of banking code];*
2
3 (iii) W.S. 13-2-101 *[powers of banks];*
4
5 (iv) W.S. 13-2-201 through 13-2-214 *[chartering];*
6
7 (v) W.S. 13-2-301 through 13-2-314 *[capital*
8 *requirements];*
9
10 (vi) W.S. 13-2-709 *[loan production offices];*
11
12 (vii) W.S. 13-3-304 *[accounting practices-dividends];*
13
14 (viii) W.S. 13-3-401 through 13-3-405 *[restricted*
15 *transactions];*
16
17 (ix) W.S. 13-3-701 through 13-3-703 *[reports &*
18 *examinations];*
19
20 (x) W.S. 13-4-201 through 13-4-206 *[insolvency];*
21
22 (xi) W.S. 13-4-302 *[appointment of FDIC as receiver];*
23 and

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2 (xii) W.S. 13-4-701 *[payment of stockholders in*
3 *liquidation]*.

4

5 (c) Consistent with subsection (d) of this section, the
6 provisions of the Wyoming Business Corporation Act, W.S.
7 17-16-101 through 17-16-1810, shall apply to special purpose
8 depository institutions.

9

10 (d) If any provision of law conflicts with this
11 chapter, this chapter shall control.

12

13 13-12-104. **Special purpose depository institutions**
14 **created; operating authority; prohibition on lending.**

15

16 (a) Special purpose depository institutions may be
17 organized as a corporation to exercise the powers and rights
18 set forth in subsection (b) of this section.

19

20 (b) Each special purpose depository institution may:

21

22 (i) Make contracts as a corporation under Wyoming
23 law;

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2 (ii) Sue and be sued;

3

4 (iii) Receive notes, buy and sell gold and silver
5 coins and bullion as permitted by federal law;

6

7 (iv) Carry on a banking business for subscribers;

8

9 (v) Provide payment services upon the request of
10 a subscriber;

11

12 *****

13 *****

14 STAFF COMMENT

15

16 Paragraphs (i) through (v), (ix) and (x) are largely from
17 W.S. 13-2-101(a).

18

19 "Banking business" is a defined term in W.S. 13-1-101(a)(ii):
20 "opening credits by the deposit or collection of money or
21 negotiable paper subject to be paid upon draft, receipt, check
22 or order;"

23

24 *****

25 *****

26

27 (vi) Become a member bank of the federal reserve
28 system;

29

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1 (vii) Engage in any other activity that is usual
2 or incidental to the business of banking, subject to the prior
3 written approval of the commissioner. The commissioner shall
4 not approve a request to engage in an incidental activity if
5 he finds that the requested activity will adversely affect
6 the solvency or the safety and soundness of the special
7 purpose depository institution or conflict with any provision
8 of this chapter;

9
10 (viii) Exercise powers and rights otherwise
11 authorized by law which are not inconsistent with this
12 chapter.

13

14 (c) A special purpose depository institution shall not
15 make loans.

16

17 *****
18 *****
19 STAFF COMMENT

20

21 The Task Force should consider the potential scope of
22 subsection (c) and W.S. 13-12-105(a) below, including
23 potential overdrafts and payment clearing issues.

24

25 It is likely possible to restrict the scope of "make loans"
26 to cover 'typical' loan agreements and exclude overdrafts and
27 payment clearing.

28

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1 *****
2 *****
3

4 (d) A special purpose depository institution shall
5 maintain its principal operating headquarters and the primary
6 office of its chief executive officer in Wyoming. The special
7 purpose depository institution shall also conduct at least
8 two (2) board meetings each year in Wyoming.

9
10 (e) As otherwise authorized by this section, the
11 special purpose depository institution may conduct business
12 with subscribers outside this state. Subject to the laws of
13 the host state, a special purpose depository institution may
14 open a branch in another state in the manner set forth in
15 W.S. 13-2-803.

16

17 13-12-105. Required liquid assets.

18

19 (a) At all times, a special purpose depository
20 institution shall maintain liquid assets valued at not less
21 than one hundred percent (100%) of its depository
22 liabilities.

23

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STAFF COMMENT

Consistent with Task Force discussions in Jackson Hole, subsection (a) may need to be clarified alongside W.S. 13-12-104(c) above.

(b) As used in this section, "liquid assets" means:

(i) United States currency held on the premises of the special purpose depository institution;

(ii) United States currency held for the special purpose depository institution by a federal reserve bank or a federally insured financial institution;

(iii) Investments which are highly liquid, including those specified by W.S. 13-3-202 and obligations of the United States treasury or other federal agency obligations, consistent with rules adopted by the commissioner.

STAFF COMMENT

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1
2 Banks are typically required to only have a fraction of
3 depository liabilities on hand at any one time. This provision
4 requires special purpose depository institutions to maintain
5 a very high proportion (100%) of liabilities as liquid assets.

6
7 *****
8 *****
9

10 13-12-106. Subscribers and organizational structure of
11 special purpose depository institutions; required deposit
12 amount; business requirement; amendment of articles of
13 incorporation.

14
15 *****
16 *****
17 STAFF COMMENT
18

19 All virtual currency provisions were deleted from W.S. 13-
20 12-106 and the remainder of this bill.

21
22 *****
23 *****
24

25 (a) No person shall maintain an account with a special
26 purpose depository institution or otherwise receive any
27 services from the institution unless the person is a
28 subscriber, as defined in W.S. 13-12-102(a)(ii). A subscriber
29 shall maintain not less than five thousand dollars
30 (\$5,000.00) in deposits with a special purpose depository
31 institution.

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2 (b) Consistent with W.S. 13-12-102(a)(ii) and in
 3 addition to any requirements specified by federal law, a
 4 special purpose depository institution shall require that a
 5 potential subscriber provide reasonable evidence that the
 6 person is engaged in bona fide business, or is likely to open
 7 a bona fide business within the next six (6) months. As used
 8 in this subsection, "reasonable evidence" shall include
 9 business entity filings, articles of incorporation or
 10 organization, bylaws, operating agreements, business plans,
 11 promotional materials, financing agreements or other
 12 evidence.

13

14 *****
 15 *****

16 STAFF COMMENT

17

18 This provision exists to reduce the money laundering,
 19 customer identification and beneficial ownership risks faced
 20 by the institution, by requiring that subscribers be
 21 businesses or prospective businesses.

22

23 *****
 24 *****

25

26 (c) A special purpose depository institution shall be
 27 a mutual corporation in which the institution is owned by its
 28 subscribers and these subscribers share in all profits and

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1 losses. A special purpose depository institution may require
 2 subscribers to pay periodic membership subscriptions, as
 3 specified in the bylaws of the institution, which are
 4 sufficient to conduct the operations of the institution and
 5 to maintain a contingency account, pursuant to W.S.
 6 13-12-107(e) and consistent with rules adopted by the
 7 commissioner. The special purpose depository institution may
 8 create multiple classes of subscribers, except that all
 9 subscribers shall have voting rights.

10

11 *****

12 *****

13 STAFF COMMENT

14

15 This provision establishes the institution as a mutual
 16 entity. This model was chosen to ensure the solvency of the
 17 bank in the absence of it being an FDIC-insured operation.
 18 This provision authorizes institutions to require subscribers
 19 to pay periodic subscriptions to the institution. This is
 20 essentially a service charge and will be used to fund the
 21 operations of the institution.

22

23 *****

24 *****

25

26 (d) Subject to the approval of the commissioner under
 27 subsection (e) of this section, a special purpose depository
 28 institution may amend its articles of incorporation for any
 29 lawful purpose by affirmative vote of a majority of its
 30 subscribers present or represented by proxy at any regular

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1 annual meeting of its subscribers or at any special meeting
2 of subscribers. Written notice of the proposed articles of
3 amendment and notice of the meeting to vote on proposed
4 articles shall be given as provided by the articles of
5 incorporation of the special purpose depository institution.

6

7 (e) Upon approval by subscribers of the special purpose
8 depository institution under subsection (d) of this section,
9 the articles of amendment shall be executed, with an executive
10 officer executing in the place of the corporate secretary,
11 and shall be delivered to the commissioner, together with the
12 fee required for filing documents, with the office of the
13 secretary of state. If the commissioner finds that the
14 articles of amendment do not conform to law, the commissioner
15 shall return them to the special purpose depository
16 institution and the articles shall not become effective. If
17 the commissioner finds that the articles of amendment conform
18 to law, the commissioner shall endorse on the articles of
19 amendment a certificate of approval together with the word
20 "filed" and the month, day and year of filing, and shall file
21 one (1) copy at the office of the commissioner and one (1)
22 copy with the office of the secretary of state. The
23 commissioner shall issue a certificate of amendment, affix it

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1 to a copy of the articles of amendment and return it to the
2 special purpose depository institution.

3

4 (f) Upon the issuance of the certificate of amendment
5 by the commissioner, the amendment is effective and the
6 articles of incorporation shall be amended accordingly.

7

8 *****
9 *****
10 STAFF COMMENT

11
12 Subsections (e) and (f) are largely from W.S. 13-4-102.

13
14 *****
15 *****
16

17 13-12-107. Dividends and assessments; required
18 reserve; rules.

19

20 (a) Dividends may be paid to subscribers when the
21 special purpose depository institution is solvent and is not
22 operating in an unsafe or unsound condition. Subscribers who
23 initially pledge subscriptions under W.S. 13-12-111(a) may
24 have preferential dividend rights as provided by the articles
25 of incorporation of the special purpose depository
26 institution. The commissioner may adopt rules to implement
27 this subsection.

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1

2 (b) Assessments may be made on subscribers of the
3 special purpose depository institution. If a majority of the
4 directors of the special purpose depository institution
5 reasonably believe that the assessments are necessary to
6 prevent insolvency or operation in an unsafe or unsound
7 condition, the directors may, by resolution, levy an
8 assessment on the subscribers of the institution. Written
9 notice of the assessment shall be delivered to each
10 subscriber, consistent with W.S. 17-16-141(c).

11

12 (c) If the commissioner has reason to believe that a
13 special purpose depository institution may be nearing
14 insolvency or operation in an unsafe or unsound condition,
15 the commissioner shall examine the special purpose depository
16 institution and ascertain the facts. If the commissioner
17 finds that an assessment is necessary, the commissioner may
18 order the institution to levy an assessment as provided in
19 subsection (b) of this section.

20

21 (d) If a subscriber fails to pay an assessment levied
22 under subsection (b) or (c) of this section within thirty
23 (30) days of delivery of the required written notice, the

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1 special purpose depository institution may deduct the
2 assessment from any deposits or other assets held by the
3 institution on behalf of the subscriber or commence a civil
4 action against the subscriber to recover the assessment. A
5 subscriber shall have thirty (30) days after an assessment is
6 deducted under this subsection to restore any necessary funds
7 on deposit with the institution to comply with the
8 requirements of W.S. 13-12-106(a).

9

10 (e) A special purpose depository institution shall
11 maintain a contingency account to cover unexpected losses and
12 expenses. Consistent with W.S. 13-12-111(a), the contingency
13 account shall be adequate and reasonable in light of current
14 and prospective business conditions, as determined by the
15 commissioner, and shall not be less than two percent (2%) of
16 the depository liabilities of the special purpose depository
17 institution. Initial subscriptions pledged by subscribers
18 under W.S. 13-12-111(a) shall constitute compliance with this
19 subsection until the contingency account of the special
20 purpose depository institution consists of not less than five
21 million dollars (\$5,000,000.00).

22

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STAFF COMMENT
Subsection (e) contains language from W.S. 13-2-212(a)(iv)
and 13-5-209(d)(ii).

This subsection also contains the 2% contingency account.

13-12-108. Federal law; technology standards.

(a) A special purpose depository institution shall
comply with all applicable federal laws, including those
relating to anti-money laundering, customer identification
and beneficial ownership.

STAFF COMMENT
The institution is required to comply with all federal laws
which are applicable to special purpose depository
institutions. This provision makes it clear that the
institution is not merely an artifice to escape federal anti-
money laundering, customer identification and beneficial
ownership requirements.

(b) Nothing in this act shall be construed to require
compliance with any federal or state law which does not apply

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1 to special purpose depository institutions. Rules adopted
 2 under this chapter shall not adopt federal or state standards
 3 governing other financial institutions, if the federal or
 4 state standards impose conditions on the operation of special
 5 purpose depository institutions which would prevent the
 6 reasonable operation of an institution under this chapter.

7

8 *****

9 *****

10 STAFF COMMENT

11

12 This provision exists to ensure this chapter will be
 13 implemented and limits the imposition of non-mandatory
 14 federal banking best practices or standards used for other
 15 financial institutions on special purpose depository
 16 institutions via rule.

17

18 *****

19 *****

20

21 (c) If a special purpose depository institution is
 22 denied authorization to access any services required to be
 23 made available under 12 U.S.C. § 248a, the attorney general
 24 shall, on behalf of the state of Wyoming and the institution,
 25 commence a civil action to enforce the requirements of 12
 26 U.S.C. § 248a relating to the institution and to maintain the
 27 authority of the state of Wyoming to charter, supervise and
 28 ensure the continued operation of institutions in this state.

29

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1 *****

2 *****

3 STAFF COMMENT

4
5 1. 12 U.S.C. § 248a requires federal reserve banks to provide
6 certain services, including currency and coin supplies, check
7 clearing, wire transfer and ACH payments, and depository
8 services for reserve funds. This provision of federal law
9 requires federal reserve banks to make these services
10 available to all depository institutions.

11
12 2. The Attorney General is not a constitutional officer in
13 Wyoming, and as a result, the Legislature has defined the
14 duties of this office in W.S. 9-1-603 and other statutes. The
15 Attorney General is directed to bring suit in various
16 circumstances in W.S. 35-11-306(o), 35-11-422, 35-11-504(k),
17 35-11-515(m), 35-11-525(f), 35-11-1701(g), 35-15-111, 40-4-
18 103 and 41-2-111(a).

19 *****

20 *****

21
22
23 (d) Subject to other applicable law, a special purpose
24 depository institution is authorized to develop and maintain
25 a technology platform, which may include a blockchain, for
26 the operations of the institution which:

27
28 (i) Integrates federal customer identification,
29 anti-money laundering and beneficial ownership requirements
30 into the platform, including periodic reporting requirements,
31 in order to streamline compliance demands for subscribers;

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1 (ii) Provides an efficient, transparent and
 2 accessible means for the commissioner and other state and
 3 federal officials to examine and otherwise ensure that a
 4 special purpose depository institution is complying with all
 5 applicable laws;

6

7 *****

8 *****

9 STAFF COMMENT

10

11 Streamlining compliance demands is one of the main objects of
 12 this bill.

13

14 *****

15 *****

16

17 (iii) Utilizes any of the following, or standards
 18 similar to the following:

19

20 (A) Legal entity identifier data
 21 specifications adopted by the legal entity identifier
 22 regulatory oversight committee;

23

24 *****

25 *****

26 STAFF COMMENT

27

28 The technology platform could use "legal entity identifier
 29 data specifications" to ensure that all parties/businesses to
 30 a transaction are more easily identifiable.

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1 *****
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4 (B) Standardized input language,
5 transformation functions and output language for specific
6 financial transactions and contracts. If standardized
7 language and functions under this subparagraph are
8 implemented, the standardized language and functions shall:

9
10 (I) Be open source and contain a data
11 dictionary of all relevant data elements;
12

13 (II) If necessary, contain transaction
14 or contract terms relating to the occurrence or nonoccurrence
15 of specified events, as well as specified data sources, which
16 the parties to the transaction or contract agree will
17 conclusively determine the occurrence or nonoccurrence of
18 specified events; and
19

20 (III) Consist of uniform data
21 structures that are capable of automatically modifying
22 transaction or contract elements based on transaction or
23 contract terms specified under subdivision (II) of this
24 subparagraph.

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2 *****

3 *****

4 STAFF COMMENT

5

6 1. Subparagraph (B) above envisions smart contracts. Smart
7 contracts are self-executing contracts reduced to computer
8 code.

9

10 2. The Task Force may wish to consider whether this section
11 is overly prescriptive. However, it may serve an
12 "authorizing" or incentive function for technology companies.

13

14 *****

15 *****

16

17 (e) A special purpose depository institution shall
 18 utilize robust electronic and physical best practices which
 19 ensure the security of all data and assets held by the
 20 institution and may include multi-signature requirements,
 21 consistent with rules adopted by the commissioner. As used in
 22 this subsection, "multi-signature requirement" means the use
 23 of private keys to execute a transaction based on the consent
 24 of two (2) or more persons.

25

26 (f) Notwithstanding any other provision of law, the
 27 commissioner may develop and implement an electronic filing
 28 system for any reports, applications, submissions, filings or
 29 other documents required to be filed under this chapter. The

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1 commissioner may, by rule, adopt standards for this system
2 and require electronic filing of all documents.

3

4 (g) As used in this section:

5

6 (i) "Blockchain" means a digital ledger or
7 database which is chronological, consensus-based,
8 decentralized and mathematically verified in nature;

9

10 (ii) "Open source" means data underlying a
11 technology platform:

12

13 (A) Which can be examined and interpreted by
14 any person without the use of proprietary technology or
15 software; and

16

17 (B) For which the creator or developer of the
18 platform has granted an unrestricted license for any person
19 to modify and use the data of the platform.

20

21 (iii) "Transformation function" means a data
22 structure that transforms data inputs into specified outputs
23 dependent upon specific financial transactions or contracts.

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2 **13-12-109. Required disclosures.**

3

4 (a) A special purpose depository institution shall
5 display on any internet website it maintains, and at each
6 window or place where it accepts deposits, a sign
7 conspicuously stating that deposits are not insured by the
8 federal deposit insurance corporation and that cash
9 assessments may be levied on subscribers if warranted by the
10 financial condition of the institution.

11

12 (b) Upon opening an account, a special purpose
13 depository institution shall require each subscriber to
14 execute a statement acknowledging that all deposits at the
15 special purpose depository institution are not insured by the
16 federal deposit insurance corporation and that cash
17 assessments may be levied on subscribers if warranted by the
18 financial condition of the institution. The special purpose
19 depository institution shall permanently retain this
20 acknowledgment.

21

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1 (c) A special purpose depository institution shall
2 include in all advertising a disclosure that deposits are not
3 insured by the federal deposit insurance corporation.

4

5 **13-12-110. Formation.**

6

7 (a) Except as otherwise provided by subsection (d) of
8 this section, five (5) or more adult persons may form a
9 special purpose depository institution. The incorporators
10 shall subscribe the articles of incorporation and transmit
11 them to the commissioner as part of an application for a
12 charter under W.S. 13-12-112.

13

14 (b) The persons forming a special purpose depository
15 institution shall execute articles of incorporation as
16 otherwise provided by law. These articles shall, as nearly
17 possible, include the requirements contained in W.S.
18 17-16-202 for corporations. The commissioner may establish,
19 by rule, other documents and materials to be filed by a
20 special purpose depository institution.

21

22 *****
23 *****
24 **STAFF COMMENT**

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1
2 This section and the sections that follow are based heavily
3 on the bank formation/chartering provisions of W.S. 13-2-201
4 *et seq.*

5
6 *****
7 *****
8

9 (c) The incorporators shall solicit subscribers and
10 subscriptions prior to filing an application for a charter
11 with the commissioner, pursuant to W.S. 13-12-111 and 13-12-
12 112. In the event an application for a charter is not filed
13 or is denied by the board, all subscriptions shall be promptly
14 returned to the pledging subscribers without loss.

15
16 (d) Subject to applicable federal and state law, a bank
17 holding company may form and hold a special purpose depository
18 institution.

19
20 13-12-111. Required initial subscriptions; capital.

21
22 (a) A special purpose depository institution shall
23 possess not less than five million dollars (\$5,000,000.00)
24 plus three (3) years of estimated operating expenses,
25 consistent with W.S. 13-12-112(b), in initial subscriptions
26 from subscribers prior to applying to the commissioner for a

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1 charter. Subscribers may not withdraw initial subscriptions
2 pledged under this subsection until the contingency account
3 required by W.S. 13-12-107(e) equals five million dollars
4 (\$5,000,000.00).

5

6 *****
7 *****
8 STAFF COMMENT
9

10 The Task Force may want to consider increasing the withdrawal
11 threshold to \$5m plus three years of operating expenses or
12 not permitting withdrawals within the first three years.

13

14 *****
15 *****
16

17 (b) The special purpose depository institution may
18 acquire additional capital prior to the granting of a charter
19 and may report this capital in its charter application.

20

21 13-12-112. Application for charter; fee; subaccount
22 created.

23

24 (a) No person shall act as a special purpose depository
25 institution without first obtaining a charter and certificate
26 of authority to operate from the commissioner under this
27 chapter.

28

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1 (b) The incorporators under W.S. 13-12-110(a) shall
2 apply to the commissioner for a charter. The application shall
3 contain the special purpose depository institution's articles
4 of incorporation, a detailed business plan, a comprehensive
5 estimate of operating expenses for the first three (3) years
6 of operation, a complete proposal for compliance with the
7 provisions of this chapter and evidence of the subscriptions
8 required under W.S. 13-12-111(a). The commissioner may
9 prescribe the form of application by rule.

10

11 (c) Each application for charter shall be accompanied
12 by an application fee established by the commissioner
13 pursuant to rule, which shall be no greater than the costs
14 incurred by the commissioner in reviewing the application.
15 The application fee shall be credited to the special purpose
16 depository institutions subaccount created by subsection (d)
17 of this section.

18

19 (d) The special purpose depository institutions
20 subaccount within the financial institutions administration
21 account is created. Funds in the subaccount shall be used by
22 the commissioner to supervise special purpose depository
23 institutions and to otherwise carry out the duties specified

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1 by this chapter. Funds in the subaccount are continuously
2 appropriated to the subaccount and shall not lapse at the end
3 of any fiscal period.

4

5 **13-12-113. Procedure upon filing application.**

6

7 (a) Upon receiving an application for a special purpose
8 depository charter, the commissioner shall notify the
9 applicants in writing within thirty (30) calendar days of any
10 deficiency in the required information or that the
11 application has been accepted for filing. When the
12 commissioner is satisfied that all required information has
13 been furnished, he shall notify the chairman of the board who
14 shall establish a time and place for a public hearing which
15 shall be conducted not less than sixty (60) days, nor more
16 than one hundred twenty (120) days, after notice from the
17 commissioner that the application is in order.

18

19 (b) Within thirty (30) days after receipt of notice of
20 the time and place of the public hearing, the applicants shall
21 cause notice of filing of the application and the hearing to
22 be published at applicant's expense in a newspaper of general
23 circulation within the county where the proposed special

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1 purpose depository institution is to be located. Publication
2 shall be made at least once a week for three (3) consecutive
3 weeks before the hearing, stating the proposed location of
4 the special purpose depository institution, the names of the
5 applicants for a charter, the nature of the activities to be
6 conducted by the proposed institution and other information
7 required by rule. The applicants shall furnish proof of
8 publication to the commissioner not more than ten (10) days
9 prior to the hearing. The commissioner shall send notice of
10 the hearing to state and national banks, federal savings and
11 loan associations and other financial institutions in the
12 state and federal agencies who have requested notice from the
13 commissioner.

14

15 13-12-114. Procedure for hearings on charter
16 applications.

17

18 The hearing for a charter application shall be conducted as
19 a contested case under the Wyoming Administrative Procedure
20 Act, W.S. 16-3-101 through 16-3-115, and shall comply with
21 the requirements of that act.

22

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1 13-12-115. Investigation and examination by
2 commissioner.

3

4 (a) Upon receiving the articles of incorporation, the
5 application for a charter and other information required by
6 the commissioner, the commissioner shall make a careful
7 investigation and examination of the following:

8

9 (i) The character, reputation, financial standing
10 and ability of the incorporators;

11

12 (ii) The character, financial responsibility,
13 banking or other financial experience and business
14 qualifications of those proposed as officers; and

15

16 (iii) The application for a charter, including the
17 adequacy and plausibility of the business plan of the special
18 purpose depository institution and whether the institution
19 has offered a complete proposal for compliance with the
20 provisions of this chapter.

21

22 *****
23 *****
24 STAFF COMMENT

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1
2 These standards are more focused than those contained in W.S.
3 13-2-211(a) because this institution is not a retail-focused
4 financial institution.

5
6 *****
7 *****
8

9 (b) The commissioner shall submit the results of his
10 investigation and examination at the public hearing on the
11 charter application and shall be subject to cross-examination
12 by any interested party. No relevant information shall be
13 excluded by the board as hearsay.

14
15 13-12-116. Approval or disapproval of application;
16 criteria for approval; action upon application.

17
18 (a) Within ninety (90) days after receipt of the
19 transcript of the public hearing, the board shall consider
20 the charter application based solely on the following
21 criteria:

22
23 (i) Whether the character, reputation, financial
24 standing and ability of the incorporators is sufficient to
25 afford reasonable promise of a successful operation;

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1 (ii) Whether the character, financial
2 responsibility, banking or other financial experience and
3 business qualifications of those proposed as officers and
4 directors is sufficient to afford reasonable promise of a
5 successful operation;

6

7 (iii) The adequacy and plausibility of the
8 business plan of the special purpose depository institution;

9

10 (iv) Compliance with the subscription
11 requirements of W.S. 13-12-111(a);

12

13 (v) The special purpose depository institution is
14 being formed for no other purpose than legitimate objectives
15 authorized by law;

16

17 (vi) The name of the proposed special purpose
18 depository institution does not resemble so closely as to
19 cause confusion with the name of any other financial
20 institution transacting business in the state; and

21

22 (vii) Whether the applicants have complied with
23 all applicable provisions of state law.

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1

2 (b) The board shall approve an application that
3 complies with the requirements of subsection (a) of this
4 section. If an application fails to meet the requirements of
5 subsection (a) of this section, the board may conditionally
6 approve or disapprove the application. The board shall state
7 findings of fact and conclusions of law as part of its
8 decision. If the board approves the application, the
9 commissioner shall endorse upon the articles of incorporation
10 the approval of the board and shall transmit one (1) copy
11 with the office of the secretary of state, retain one (1)
12 copy and return a copy to the applicants within twenty (20)
13 days after the date of the decision of the board approving
14 the application. If the board conditionally approves an
15 application to require compliance with one (1) or more of the
16 factors set forth in paragraphs (a)(i) through (vii) of this
17 section, and upon compliance by the applicants, the
18 commissioner shall proceed as provided in the preceding
19 sentence. If the board disapproves the application, the
20 commissioner shall mail notice of the disapproval to the
21 applicants within twenty (20) days of the board's
22 disapproval.

23

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1 *****
 2 *****
 3 STAFF COMMENT
 4
 5 Subsection (b) is from W.S. 13-2-212(b).
 6
 7 *****
 8 *****
 9

10 13-12-117. Certificate of authority to commence
 11 business required; application; approval or denial; failure
 12 to commence business.

13

14 (a) If an application is approved and a charter granted
 15 by the board under W.S. 13-12-116, the special purpose
 16 depository institution shall not commence business before
 17 receiving a certificate of authority to operate from the
 18 commissioner. The application for a certificate of authority
 19 shall be made to the commissioner and shall certify the
 20 address at which the special purpose depository institution
 21 will operate and that all of the adopted bylaws of the
 22 institution have been attached as an exhibit to the
 23 application. The application shall state the identities and
 24 contact information of officers and directors. The
 25 commissioner shall approve or deny an application for a
 26 certificate of authority to operate within thirty (30) days
 27 after a complete application has been filed. The authority of

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1 the commissioner to disapprove any application shall be
2 restricted solely to noncompliance with this section. If the
3 commissioner approves the application, he shall issue a
4 certificate of authority to the applicants within twenty (20)
5 days. If the commissioner denies the application, he shall
6 mail a notice of denial to the applicants within twenty (20)
7 days, stating the reasons for denying the application, and
8 grant to the applicants a maximum period of ninety (90) days
9 to resubmit the application with the necessary corrections.
10 If the applicants fail to comply with requirements of the
11 notice of denial within ninety (90) days from the receipt of
12 the notice, the approval of the charter of the special purpose
13 depository institution shall be revoked by the commissioner.
14 The failure of the commissioner to act upon an application
15 for a certificate of authority within thirty (30) days shall
16 be deemed an approval.

17

18 (b) If an approved special purpose depository
19 institution fails to commence business in good faith within
20 six (6) months after the issuance of a certificate of
21 authority to operate by the commissioner, the charter and
22 certificate of authority shall expire. The board, for good
23 cause and upon an application filed prior to the expiration

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1 of the six (6) month period, may extend the time within which
2 the special purpose depository institution may open for
3 business.

4

5 13-12-118. Decisions by board appealable; grounds.

6

7 Any decision of the board or commissioner in approving,
8 conditionally approving or disapproving a charter for a
9 special purpose depository institution or the issuance or
10 denial of a certificate of authority to operate is appealable
11 to the district court of the county in which the institution
12 is to be located in accordance with the provisions of the
13 Wyoming Administrative Procedure Act, W.S. 16-3-101 through
14 16-3-115. In addition to the grounds for appeal contained in
15 the Wyoming Administrative Procedure Act, an appellant may
16 appeal if the board or the commissioner fails to make any of
17 the required findings or otherwise take an action required by
18 law.

19

20 13-12-119. Surety bond; pledged investments;
21 investment income; bond or pledge increases; hearings.

22

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1 (a) Except as otherwise provided by subsection (b) of
2 this section, a special purpose depository institution shall,
3 before transacting any business, pledge or furnish a surety
4 bond to the commissioner to cover costs likely to be incurred
5 by the commissioner in a liquidation or receivership of the
6 special purpose depository institution. The amount of the
7 surety bond or pledge of assets under subsection (b) of this
8 section shall be determined by the commissioner in an amount
9 sufficient to defray the costs of a liquidation or
10 receivership.

11

12 (b) In lieu of a bond, a special purpose depository
13 institution may irrevocably pledge specified capital
14 equivalent to a bond under subsection (a) of this section.
15 Any capital pledged to the commissioner under this subsection
16 shall be held in a state or nationally chartered bank or
17 savings and loan association having a principal or branch
18 office in this state and all costs associated with pledging
19 and holding such capital are the responsibility of the special
20 purpose depository institution.

21

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1 (c) Capital pledged to the commissioner shall be of the
2 same nature and quality as those required for state financial
3 institutions under W.S. 9-4-805.

4

5 (d) Surety bonds shall run to the state of Wyoming, and
6 shall be approved under the terms and conditions required
7 under W.S. 9-4-804(b) and (c).

8

9 (e) The commissioner may adopt rules to establish
10 additional investment guidelines or investment options for
11 purposes of the pledge or surety bond required by this
12 section.

13

14 (f) In the event of a liquidation or receivership of a
15 special purpose depository institution as provided in W.S.
16 13-12-123, the commissioner may, without regard to
17 priorities, preferences or adverse claims and with court
18 approval, reduce the surety bond or capital pledged under
19 this section to cash as soon as practicable and utilize the
20 cash to defray the costs associated with the liquidation or
21 receivership.

22

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1 (g) Income from capital pledged under subsection (b) of
 2 this section shall be paid to the special purpose depository
 3 institution unless a court places the institution in
 4 liquidation or receivership.

5

6 (h) Upon evidence that the current surety bond or
 7 pledged capital is insufficient, the commissioner may require
 8 any special purpose depository institution to increase its
 9 surety bond or pledged capital by providing not less than
 10 thirty (30) days written notice to the institution. The
 11 special purpose depository institution may request a hearing
 12 before the board not more than thirty (30) days after
 13 receiving written notice from the commissioner under this
 14 subsection. Any hearing before the board shall be held
 15 pursuant to the Wyoming Administrative Procedure Act, W.S.
 16 16-3-101 through 16-3-115.

17

18 *****

19 *****

20 STAFF COMMENT

21

22 The Banking Commissioner has indicated that a surety bond may
 23 not be appropriate for special purpose depository
 24 institutions. The language above authorizes, but does not
 25 require, a surety bond. Pledged capital may be used instead.

26

27 *****

28 *****

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1

2 13-12-120. Reports and examinations; supervisory fees;
3 resolution fund.

4

5 (a) The commissioner may call for special reports
6 verified under oath from a special purpose depository
7 institution at any time, as necessary to inform the
8 commissioner of the condition of the institution.

9

10 (b) All reports required of special purpose depository
11 institutions by the commissioner and all materials relating
12 to examinations of these institutions shall be subject to the
13 provisions of W.S. 9-1-512.

14

15 (c) Every special purpose depository institution is
16 subject to the inspection of the commissioner. The
17 commissioner or a duly appointed examiner shall visit and
18 examine special purpose depository institutions on a schedule
19 established by rule. The commissioner or a duly appointed
20 examiner shall make a complete and careful examination of the
21 condition and resources of the special purpose depository
22 institution, the mode of managing institution affairs and
23 conducting business, the actions of officers and directors in

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1 the investment and disposition of institution funds, the
 2 safety and prudence of institution management, compliance
 3 with the requirements of this chapter and such other matters
 4 as the commissioner may require. After any examination, the
 5 special purpose depository institution shall remit to the
 6 commissioner an amount equal to the total cost of the
 7 examination. This amount shall be remitted to the state
 8 treasurer and deposited into the special purpose depository
 9 institutions subaccount created by W.S. 13-12-112(d).

10

11 *****

12 *****

13 STAFF COMMENT

14

15 At the request of the Task Force, this provision was modified
 16 to require special purpose depository institutions to pay the
 17 cost of examinations, much like trust companies are currently
 18 required to do.

19

20 *****

21 *****

22

23 (d) On or before January 31 and July 31 of each year,
 24 a special purpose depository institution shall compute and
 25 pay supervisory fees to the commissioner based on the total
 26 deposits of the special purpose depository institution as of
 27 the preceding December 31 and June 30 respectively.
 28 Supervisory fees under this section shall provide for the

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1 operating costs of the office of the commissioner and the
2 administration of the laws governing special purpose
3 depository institutions. Such fees shall be established by
4 rule of the commissioner and shall be adjusted by the
5 commissioner to assure consistency with the cost of
6 supervision. Supervisory fees shall be deposited by the
7 commissioner with the state treasurer and credited to the
8 special purpose depository institutions subaccount created by
9 W.S. 13-12-112(d).

10

11 (e) The special purpose depository institution
12 resolution account is created. A portion of each supervisory
13 fee paid pursuant to subsection (d) of this section shall be
14 paid to the resolution account and shall be used by the
15 commissioner in the event of a liquidation or receivership of
16 a special purpose depository institution. The amount paid to
17 the resolution account shall be established by rule of the
18 commissioner. All amounts paid shall be remitted to the state
19 treasurer and credited to the special purpose depository
20 institution resolution account. Funds in the account are
21 continuously appropriated and shall not lapse at the end of
22 any fiscal period.

23

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1 *****
2 *****
3 STAFF COMMENT
4
5 1. The Task Force should consider whether the resolution
6 fund established by this section is necessary or appropriate
7 in light of the structure of the institution. The funding
8 mechanism of the resolution fund should also be considered.
9
10 2. The Task Force could consider establishing a captive
11 insurer for special purpose institutions, much like South
12 Dakota's captive for trust companies. See S.D.C.L. § 51A-6-
13 23.
14
15 3. The Task Force could also consider requiring directors
16 and officers to maintain a corporate liability insurance
17 policy, in the same way as South Dakota. See S.D.C.L. § 51A-
18 6A-19.
19
20 *****
21 *****
22

23 13-12-121. Suspension or revocation of charter.
24

25 (a) The commissioner may suspend or revoke the charter
26 of a special purpose depository institution if, after notice
27 and opportunity for a hearing, the commissioner determines
28 that:

29
30 (i) The special purpose depository institution has
31 failed or refused to comply with an order issued under W.S.
32 13-10-201 through 13-10-209;
33

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1 (ii) The application for a charter contained a
2 false statement or material misrepresentation or omission; or
3

4 (iii) An officer or agent of the special purpose
5 depository institution, in connection with an application for
6 a charter, examination, report or other document filed with
7 the commissioner, knowingly made a false statement, material
8 misrepresentation or material omission to the board, the
9 commissioner or the duly authorized agent of the board or
10 commissioner.

11

12 **13-12-122. Continuing jurisdiction.**

13

14 If the charter of a special purpose depository institution is
15 surrendered, suspended or revoked, the institution shall
16 continue to be subject to the provisions of this chapter
17 during any liquidation or receivership.

18

19 **13-12-123. Insolvency; unsound or unsafe condition;
20 receivership; payment of subscribers.**

21

22 (a) If the commissioner finds that a special purpose
23 depository institution is insolvent or is operating in an

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1 unsafe or unsound condition that has not been remedied within
2 the time prescribed under an order of the commissioner issued
3 pursuant to W.S. 13-10-201 through 13-10-209, the
4 commissioner shall apply to the district court, in the county
5 in which the principal office of the special purpose
6 depository institution is located, to be appointed receiver
7 for the liquidation or receivership of the special purpose
8 depository institution. The expense of the liquidation or
9 receivership shall be paid out of the assets of the special
10 purpose depository institution and the bond or pledged
11 investments required under W.S. 13-12-119.

12

13 (b) Title to the assets of the special purpose
14 depository institution shall vest in the commissioner upon
15 appointment of the commissioner as receiver by the court
16 pursuant to subsection (a) of this section, without the
17 execution of any instrument of conveyance, assignment,
18 transfer or endorsement.

19

20 (c) Subject to the approval of the appointing court, as
21 receiver, the commissioner may:

22

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1 (i) Take possession of all books, records of
2 account and assets of the special purpose depository
3 institution;

4

5 (ii) Collect debts, claims and judgments belonging
6 to the special purpose depository institution and take any
7 other action necessary to preserve and liquidate the assets
8 of the institution;

9

10 (iii) Appoint a special assistant to take charge
11 of the affairs of the special purpose depository institution.
12 The special assistant shall qualify, give bond and receive
13 compensation in the same manner as the commissioner acting as
14 a receiver, but compensation for the special assistant shall
15 be paid by the institution;

16

17 (iv) Execute, in the name of the special purpose
18 depository institution, any instrument necessary or proper to
19 effectuate the powers of a receiver or perform the duties of
20 a receiver;

21

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1 (v) Initiate, pursue, compromise and defend
2 litigation involving any right, claim, interest or liability
3 of the special purpose depository institution;

4

5 (vi) Exercise all powers of the special purpose
6 depository institution as of the date of appointment as
7 receiver;

8

9 (vii) Incur debt as necessary in the liquidation
10 or receivership of the special purpose depository institution
11 and secure any debt by the pledge or mortgage of assets of
12 the institution;

13

14 (viii) Sell assets to compromise any debt, claim,
15 obligation or judgment due to the special purpose depository
16 institution, discontinue any pending action or other
17 proceeding and sell or otherwise transfer any portion of the
18 asset or liabilities of the institution;

19

20 (ix) Establish necessary ancillary receiverships
21 in other jurisdictions;

22

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1 (x) Distribute assets, in accordance with court
2 approval, after notice to all claimants. Subject to the
3 approval of the court, the receiver may make periodic and
4 interim liquidating distributions; and

5

6 (xi) Take any other incidental action reasonably
7 related to the powers set forth in this subsection.

8

9 (d) If provided by the articles of incorporation of the
10 special purpose depository institution, subscribers who
11 initially pledge subscriptions under W.S. 13-12-111(a) may
12 receive payment of subscriptions and accumulated dividends in
13 order of preference before payments are made to other
14 subscribers.

15

16 **13-12-124. Order declaring special purpose depository**
17 **institution properly wound up and dissolved.**

18

19 (a) Upon the completion of the liquidation of a special
20 purpose depository institution pursuant to W.S. 13-12-123,
21 the commissioner shall petition the court for an order
22 declaring the special purpose depository institution properly
23 wound up and dissolved.

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1

2 (b) After notice and hearing as ordered by the court,
3 the court shall enter an order declaring the special purpose
4 depository institution wound up and dissolved. The order
5 shall, to the extent applicable, declare that:

6

7 (i) The institution has been properly wound up;

8

9 (ii) All known assets of the institution capable
10 of distribution have been distributed, pursuant to W.S.
11 13-12-123;

12

13 (iii) The special purpose depository institution
14 is dissolved; and

15

16 (iv) If there are known debts or other
17 liabilities, describe the provision made for their payment,
18 setting forth all information necessary to enable a creditor
19 or other person to whom payment is to be made to appear and
20 claim payment of the debt or liability.

21

22 (c) An order issued pursuant to subsection (b) of this
23 section shall review, modify as necessary and adopt a plan

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1 proposed by the commissioner for the disposition or
2 maintenance of any remaining real or personal property or
3 other special purpose depository institution assets. The plan
4 shall include written notice to all known owners or
5 beneficiaries of the assets.

6

7 (d) The court may enter additional orders and grant
8 further relief as it determines appropriate upon the evidence
9 submitted.

10

11 (e) Upon the issuance of the order declaring the
12 special purpose depository institution dissolved, the
13 existence of the special purpose depository institution as a
14 corporation shall cease, except for purposes of any necessary
15 additional winding up. The commissioner shall promptly file
16 a copy of the order, certified by the clerk of the court,
17 with the office of the secretary of state.

18

19 13-12-125. Change of place of business, dissolution,
20 conversion, merger or sale of special purpose depository
21 institutions.

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1 (a) A proposal to change the place of business,
2 dissolve, convert, merge or sell a special purpose depository
3 institution may be proposed by the officers, directors or
4 subscribers of the institution. The proposal shall be
5 considered and approved or rejected by the subscribers of the
6 special purpose depository institution in the same manner as
7 an amendment to the articles of incorporation of the
8 institution under W.S. 13-12-106.

9

10 (b) A proposal approved under subsection (a) of this
11 section to change the place of business, convert or merge a
12 special purpose depository institution shall be conducted as
13 nearly as practicable under W.S. 13-4-101 through 13-4-114,
14 subject to exceptions specified by the commissioner which are
15 necessary to comply with this chapter. The applicable
16 provisions of the Wyoming Business Corporation Act, W.S.
17 17-16-101 through 17-16-1810, shall not apply to a change of
18 a place of business or merger conducted under this subsection.

19

20 *****

21 *****

22 STAFF COMMENT

23

24 This section grants the subscribers of a special purpose
25 depository institution a great deal of control over the

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1 operation of the institution. The Task Force should consider
2 whether this authority is appropriate.

3
4 *****
5 *****
6

7 13-12-126. Voluntary dissolution of special purpose
8 depository institution; liquidation; reorganization;
9 application for dissolution; filing fee; filing with the
10 office of the secretary of state; revocation of charter.

11

12 (a) A special purpose depository institution may
13 voluntarily dissolve in accordance with the provisions of
14 this section. If a proposal to dissolve a special purpose
15 depository institution is approved under W.S. 13-12-125(a),
16 voluntary dissolution shall be accomplished by either
17 liquidating the special purpose depository institution or
18 reorganizing the institution into an appropriate business
19 entity that does not engage in any activity authorized only
20 for a special purpose depository institution. Upon complete
21 liquidation or completion of the reorganization, the
22 commissioner shall revoke the charter of the special purpose
23 depository institution and afterward, the company shall not
24 use the word "special purpose depository institution" or

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1 "bank" in its business name or in connection with its ongoing
2 business.

3

4 (b) The special purpose depository institution may
5 dissolve its charter either by liquidation or reorganization
6 and shall file an application for dissolution with the
7 commissioner, accompanied by a filing fee established by rule
8 of the commissioner. The application shall include a
9 comprehensive plan for dissolution setting forth the proposed
10 disposition of all assets and liabilities, in reasonable
11 detail to effect a liquidation or reorganization, and any
12 other plans required by the commissioner. The plan of
13 dissolution shall provide for the discharge or assumption of
14 all of the known and unknown claims and liabilities of the
15 special purpose depository institution. Additionally, the
16 application for dissolution shall include other evidence,
17 certifications, affidavits, documents or information as the
18 commissioner may require demonstration of how assets and
19 liabilities will be disposed, the timetable for effecting
20 disposition of the assets and liabilities and the proposal of
21 the special purpose depository institution for addressing any
22 claims that are asserted after dissolution has been
23 completed. The commissioner shall examine the application for

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1 compliance with this section, the business entity laws
2 applicable to the required type of dissolution and applicable
3 rules. The commissioner may conduct a special examination of
4 the special purpose depository institution, at the cost of
5 the institution, for purposes of evaluating the application.

6

7 (c) If the commissioner finds that the application is
8 incomplete, the commissioner shall return it for completion
9 not later than sixty (60) days after it is filed. If the
10 application is found to be complete by the commissioner, not
11 later than thirty (30) days after it is filed, the
12 commissioner shall approve or disapprove the application. If
13 the commissioner approves the application, the special
14 purpose depository institution may proceed with the
15 dissolution pursuant to the plan outlined in the application,
16 subject to any further conditions the commissioner may
17 prescribe. If the special purpose depository institution
18 subsequently determines that the plan of dissolution needs to
19 be amended to complete the dissolution, it shall file an
20 amended plan with the commissioner and obtain approval to
21 proceed under the amended plan. If the commissioner does not
22 approve the application or amended plan, the special purpose
23 depository institution may appeal the decision to the board

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1 pursuant to the Wyoming Administrative Procedure Act, W.S.
2 16-3-101 through 16-3-115.

3

4 (d) Upon completion of all actions required under the
5 plan of dissolution and satisfaction of all conditions
6 prescribed by the commissioner, the special purpose
7 depository institution shall submit a written report of its
8 actions to the commissioner. The report shall contain a
9 certification made under oath that the report is true and
10 correct. Following receipt of the report, the commissioner,
11 no later than sixty (60) days after the filing of the report,
12 shall examine the special purpose depository institution to
13 determine whether the commissioner is satisfied that all
14 required actions have been taken in accordance with the plan
15 of dissolution and any conditions prescribed by the
16 commissioner. If all requirements and conditions have been
17 met, the commissioner shall, within thirty (30) days of the
18 examination, notify the special purpose depository
19 institution in writing that the dissolution has been
20 completed and issue a certificate of dissolution.

21

22 (e) Upon receiving a certificate of dissolution, the
23 special purpose depository institution shall surrender its

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1 charter to the commissioner. The special purpose depository
2 institution shall then file articles of dissolution and other
3 documents required by W.S. 17-16-1401 through 17-16-1440 for
4 a corporation with the office of the secretary of state. In
5 the case of reorganization, the special purpose depository
6 institution shall file the documents required by the
7 secretary of state to finalize the reorganization.

8

9 (f) If the commissioner determines that all required
10 actions under the plan for dissolution, or as otherwise
11 required by the commissioner, have not been completed, the
12 commissioner shall notify the special purpose depository
13 institution, not later than thirty (30) days after this
14 determination, in writing what additional actions shall be
15 taken in order for the institution to be eligible for a
16 certificate of dissolution. The commissioner shall establish
17 a reasonable deadline for the submission of evidence that
18 additional actions have been taken and the commissioner may
19 extend any deadline upon good cause. If the special purpose
20 depository institution fails to file a supplemental report
21 showing that the additional actions have been taken before
22 the deadline, or submits a report that is found not to be
23 satisfactory by the commissioner, the commissioner shall

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1 notify the special purpose depository institution in writing
2 that its voluntary dissolution is not approved, and the
3 institution may appeal the decision to the board pursuant to
4 the Wyoming Administrative Procedure Act, W.S. 16-3-101
5 through 16-3-115.

6

7 13-12-127. Failure to submit required report; fees;
8 rules.

9

10 If a special purpose depository institution fails to submit
11 any report required by this chapter or by rule within the
12 prescribed period, the commissioner may impose and collect a
13 fee for each day the report is overdue, as established by
14 rule.

15

16 13-12-128. Willful neglect to perform duties imposed by
17 law or failure to conform to material lawful requirement made
18 by commissioner; removal.

19

20 (a) Each officer, director, employee or agent of a
21 special purpose depository institution, following written
22 notice from the commissioner, is subject to removal upon order
23 of the commissioner if he knowingly or willfully fails to:

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1

2 (i) Perform any duty required by this act or other
3 applicable law; or

4

5 (ii) Conform to any rule or order of the
6 commissioner.

7

8 **13-12-129. Rules.**

9

10 The commissioner shall adopt all rules necessary to implement
11 this chapter, consistent with W.S. 13-12-108(b).

12

13 **Section 3.** W.S. 13-1-101(a)(i) and by creating a new
14 paragraph (xvi), 13-1-201, 13-1-203, 13-1-204, 13-1-605(b) by
15 creating a new paragraph (vii), 13-2-103, 13-4-504 by
16 creating a new subsection (e) and 13-10-201(a)(iv) are
17 amended to read:

18

19 **13-1-101. Definitions.**

20

21 (a) As used in this act, unless another definition is
22 specifically provided for a section, article or chapter of
23 this act:

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1

2 (i) "Bank" means any corporation, excluding
3 national banks, having a place of business within this state
4 which engages in banking business or a special purpose
5 depository institution, subject to the limitations set forth
6 in W.S. 13-12-101 through 13-12-129;

7

8 (xvi) "Special purpose depository institution"
9 means a corporation operating pursuant to W.S. 13-12-101
10 through 13-12-129.

11

12 13-1-201. Generally.

13

14 Subject to W.S. 13-12-103, this act applies to all banks in
15 this state organized under this act and to national banks
16 where specifically provided by the text.

17

18 13-1-203. Compliance required.

19

20 No person or entity shall carry on a banking business except
21 in compliance with this act or W.S. 13-12-101 through
22 13-12-129.

23

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1 13-1-204. Use of terms or names.

2

3 (a) No person or entity shall advertise, issue or
4 circulate any paper or exhibit any sign using any of the terms
5 "bank", "banker", "banking", "special purpose depository
6 institution", or words of similar import, or use the name of
7 any other financial institution as defined by W.S.
8 13-1-101(a)(ix) until they have fully complied with this act
9 or W.S. 13-12-101 through 13-12-129.

10

11 (b) Consistent with subsection (a) of this section, a
12 special purpose depository institution may refer to itself as
13 a bank.

14

15 13-1-605. State banking board; meetings; compensation;
16 purpose.

17

18 (b) The banking board shall:

19

20 (vii) Perform the duties prescribed in W.S.
21 13-12-101 through 13-12-129.

22

23 13-2-103. Federal deposit insurance.

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1

2 (a) All banks, except special purpose depository
 3 institutions, shall obtain insurance of their deposits by the
 4 United States and shall subscribe for insurance of deposit
 5 accounts by the federal deposit insurance corporation (FDIC).

6

7 (b) Nothing in this section shall be construed as
 8 prohibiting a special purpose depository institution from
 9 obtaining FDIC insurance, if available.

10

11 13-4-504. Reorganization.

12

13 (e) Subparagraph (a)(ii)(B) of this section shall not
 14 apply to a special purpose depository institution.

15

16 *****

17 *****

18 STAFF COMMENT

19

20 This provision eliminates potential ambiguity in a
 21 reorganization since the depositors and stockholders of a
 22 special purpose depository institution are the same.

23

24 *****

25 *****

26

27 13-10-201. Definitions.

28

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1 (a) As used in this article:

2

3 (iv) "Wyoming financial institution" means any
4 bank, savings and loan association, special purpose
5 depository institution or trust company chartered or
6 organized under the laws of Wyoming.

7

8 **Section 4.** Consistent with this act, the banking
9 commissioner shall adopt rules governing special purpose
10 depository institutions on or before July 1, 2019, provided
11 these rules shall not take effect until July 1, 2019.

12

13 **Section 5.**

14

15 (a) Except as otherwise provided by subsection (b) of
16 this section, this act is effective July 1, 2019.

17

18 (b) Section 4 of this act is effective immediately upon
19 completion of all acts necessary for a bill to become law as
20 provided by Article 4, Section 8 of the Wyoming Constitution.

21

22 *****
23 *****
24 **STAFF COMMENT**

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1
2 July 1, 2019 is the default effective date for legislation
3 in Wyoming. The Task Force should consider whether July 1,
4 2019 gives the Banking Commissioner adequate time to adopt
5 rules governing special purpose depository institutions.
6

7 *****
8 *****
9

10 (END)